IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.9.2007

CORAM:

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE R.REGUPATHI

H.C.P.No.825 of 2007

Kalayarassi .. Petitioner

Vs

1. The State of Tamilnadu,
   rep. by its Secretary to Govt.,
   Prohibition and Excise Department,
   Fort St. George, Chennai-9.

2. The District Magistrate and
   District Collector,
   Kancheepuram District
   Kancheepuram. .. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India for issue of Writ of Habeas Corpus as stated therein.

For Petitioner : Mr.N.Sudharsan
For Respondents: Mr.N.R.Elango
Additional Public Prosecutor

ORDER

(Order of the Court was made by P.D.DINAKARAN,J.)

The petitioner is the wife of the detenu Govindan, son of Nagooran. The detenu was incarcerated by order dated 15.5.2007 of the second respondent under the provisions of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982) branding him as a Bootlegger. Hence, the petitioner seeks a writ of Habeas Corpus to call for the records in connection with the order of detention passed by the second respondent dated 15.5.2007 in BDFGISSV.No.30/2007 against her husband, who is now confined at Central Prison, Puzhal, Chennai, to

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set aside the same and to direct the respondents to produce the above said detenu before this Court and set him at liberty.

2. According to the respondents, the detenu was found selling illicit arrack on 27.4.2007 at 8.00 hours at the back side of Seetanancheri Temple in Salavakkam police limits. The Inspector of Police, Prohibition Enforcement Wing Police Station, Madurantakam, apprehended the detenu and seized the illicit arrack found therein. The samples were sent for chemical analysis and it was found that the arrack contained 8.9% mg atropine per 100 ml. A case was registered in Crime No.471/2007 under Section 4(1)(i), 4(1)(aaa) and 4(1-A) of the Tamil Nadu Prohibition Act r/w Rules 6 and 11 of Rectified Spirit Rules.

3. The second respondent, taking note of the above case as a ground case and finding that there are three adverse cases of alike nature and having satisfied that there is a compelling necessity to detain the detenu in order to prevent him from indulging in the activities which are prejudicial to the maintenance of public order and public health, ordered his detention dubbing him as a bootlegger.

4. Since the learned counsel for the petitioner assailed the order of detention mainly on the ground of delay in considering the representation of the detenu, we do not propose to go into the other aspects, as the said ground of belated consideration of the representation has to succeed. According to the learned counsel, there was a delay in receiving the report by the Government, which vitiates the order of detention.

5.1. Before delving into the issue relating to the delay as contended above, it would be apt to refer the law on the point.

5.2. Article 22(5) of the Constitution of India suggests that the obligation of the government is to offer the detenu an opportunity of making a representation against the order, before it is confirmed according to the procedure laid down under the relevant provisions of law, vide K.M. Abdulla Kunhi v. Union of India, (1991) 1 SCC 476 .

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5.3. The right to representation under Article 22(5) of the Constitution of India includes right to expeditious disposal by the State Government. Expedition is the rule and delay defeats mandate of Article 22(5) of the Constitution of India, vide Ram Sukrya Mhatre v. R.D. Tyagi, 1992 Supp (3) SCC 65.

5.4. Any inordinate and unexplained delay on the part of the Government in considering the representation renders the detention

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illegal, vide Tara Chand v. State of Rajasthan, (1980) 2 SCC 321 and Raghavendra Singh v. Supdt., Distt. Jail, (1986) 1 SCC 650.

5.5. It is a constitutional obligation of the Government to consider the representation forwarded by the detenu without any delay. Though no period is prescribed by Article 22 of the Constitution for the decision to be taken on the representation, the words "as soon as may be" in clause (5) of Article 22 convey the message that the representation should be considered and disposed of at the earliest. But that does not mean that the authority is pre-empted from explaining any delay which would have occasioned in the disposal of the representation. The court can certainly consider whether the delay was occasioned due to permissible reasons or unavoidable causes. If delay was caused on account of any indifference or lapse in considering the representation, such delay will adversely affect further detention of the prisoner. In other words, it is for the authority concerned to explain the delay, if any, in disposing of the representation. It is not enough to say that the delay was very short. Even longer delay can as well be explained. So the test is not the duration or range of delay, but how it is explained by the authority concerned. Even the reason that the Minister was on tour and hence there was a delay of five days in disposing of the representation was rejected by the Apex Court holding that when the liberty of a citizen guaranteed under Article 21 of the Constitution of India is involved, the absence of the Minister at head quarters is not sufficient to justify the delay, since the file could be reached the Minister with utmost promptitude in cases involving the vitally important fundamental right of a citizen, vide Rajammal v. State of T.N., (1999) 1 SCC 417.

6. In the case on hand, the impugned order of detention came to be passed on 15.5.2007. The detenu has made a representation dated 28.5.2007 to the Government, which was received on 29.5.2007. Remarks were called for from the detaining authority on 30.5.2007. The detaining authority in turn called for parawar remarks from the sponsoring authority on 2.6.2007, which was received by the detaining authority on 5.6.2007. Report was sent to the Government on 5.6.2007, which was received only on 18.6.2007. It is contended that even though the report was sent to the Government by the detaining authority on 5.6.2007, it was received by the Government only on 18.6.2007 and hence, there was a delay of thirteen days and in the absence of convincing reply on behalf of the State, the order of detention vitiates. We find some force in the contention of the learned counsel. Even excluding the intervening public holidays viz., 9.6.2007, 10.6.2007, 16.6.2007 and 17.6.2007 (Saturday and Sunday), there is a delay of nine days in receiving the report by the Government.

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7. At this juncture, a reference to the decision of the Apex Court in Kundanbhai Dulabhai Sheikh v District Magistrate, Ahmedabad, (1996) 3 SCC 194 is apposite:

> "In spite of law laid down above by this Court repeatedly over the past three decades, the Executive, namely, the State Government and its officers continue to behave in their old, lethargic fashion and like all other files rusting in the Secretariat for various reasons including red-tapism, the representation made by a person deprived of his liberty, continue to be dealt with in the same fashion. The Government and its officers will not give up their habit of maintaining a consistent attitude of lethargy. So also, this Court will not hesitate in quashing the order of detention to restore the 'liberty and freedom' to the person whose detention is allowed to become bad by the Government itself on account of his representation not being disposed of at the earliest."

8. That apart, it is a settled law that there should not be supine indifference, slackness or callous attitude in considering the representation. Any unexplained delay in the disposal of representation would be a breach of the constitutional imperative and it would render the continued detention impermissible and illegal, vide K.M. Abdulla Kunhi v. Union of India, (1991) 1 SCC 476.

9. In the instant case, admittedly, there is a delay of nine days in receiving the remarks by the Government and in the absence of valid explanation for the said delay, in our considered opinion, the same vitiates the order of detention. We are, therefore, inclined to allow this petition. Accordingly, the order of detention dated 15.5.2007 is set aside. The detenu is directed to be set at liberty forthwith unless his presence is required in connection with any other case.

Sd/-
Asst. Registrar.

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Sub Asst. Registrar.

ATR

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To:

1. The Secretary to Govt.,
   State of Tamilnadu,
   Prohibition and Excise Department,
   Fort St. George, Chennai-9.

2. The District Magistrate and
   District Collector,
   Kancheepuram District
   Kancheepuram.

3. The Superintendent
   Central Prison
   Puzhal, Chennai.

4. The Public Prosecutor,
   High Court, Madras.

5. The Joint Secretary to Government
Public (Law and order)
Fort St. George, Chennai-9.

1 cc to M/s. N. Sudharsan, Advocate, SR. 58502

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